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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM CHARLES TURNER,

Defendant and Appellant.

A140213

(Contra Costa County  
Super. Ct. No. 51311810)

Defendant William Charles Turner appeals his conviction for first degree burglary and resisting an executive officer. He contends that the trial court erred in admitting evidence that he was on probation with a search clause at the time of the alleged incident. We shall affirm.

**Background**

At trial, there was substantial evidence of the following facts. Shortly before noon on May 17, 2013, Don Perez observed out of his second story window three young men jump over the side yard fence of a house across the street belonging to Patrick and Robin Scheier. Perez became suspicious, dialed 911, and stepped out of his house. Perez saw one of the young men, later identified as Justice M., jump back over the gate and walk north. A few minutes later, Perez heard the sound of breaking glass and, after another several minutes, saw two young men emerge from the front door of 3801 Rockford Drive. One of the men, later identified as defendant, was an African-American in his late

teens or early 20's, wearing a black zippered hooded sweatshirt, jeans, and tennis shoes. The other man, later identified as Raeshad Dixon, was also in his late teens or early 20's, wearing a gray, zippered hooded sweatshirt, jeans, and tennis shoes. Perez watched as defendant and Dixon headed west on Bluerock Drive, walking quickly. About four or five houses away, the two men took off their sweatshirts and discarded them. Perez saw that defendant was wearing a black t-shirt underneath his black sweater. Perez lost sight of the two men but soon saw Dixon reemerge wearing no shoes and enter a gold-trimmed, four-door Lexus, and drive west on Flintrock Drive.

Pamela Bryant, a resident in the neighborhood, testified that she arrived home shortly before noon on May 17 and observed an African-American man wearing a jacket jump over a fence and emerge from her neighbor's yard. She also noticed an unfamiliar Lexus sedan with no license plate parked outside her driveway. The keys were in the ignition. She then saw another man running down the street without shoes, enter the Lexus and drive off.

Lynn Ann Flores testified that before noon on May 17 she was driving with her sister in the area when she observed two young men walking quickly towards her. Their heads were covered with their jacket hoods and their jackets were zipped, even though it was a warm day. The two men began to run, and, as they were running, Flores saw items fall from the bottoms of their jackets. Flores then observed both men take off and discard their jackets. Police later found a sweatshirt in near-by bushes and another sweatshirt under a near-by truck. The latter sweater had several jewelry items in the front pocket.

Corporal Rick Smith, an Antioch police officer, was dispatched to the area for a burglary and noticed a white Lexus vehicle with dealer plates. The car fled after Smith attempted an investigatory stop. The ensuing high-speed chase ended when the Lexus hit another vehicle. The driver, Dixon, was arrested and taken into custody.

Officer Wardell Carter, in full uniform, was also dispatched to the area. He noticed Justice M. walking away from the scene, suspected he was involved in the burglary, and

detained him without incident. Then, driving in the area, Carter saw defendant running in his direction. He saw defendant run into a yard and the officer then parked his patrol car and ran after defendant. Defendant created an opening in the gate to the property's rear yard. As Carter swiped at defendant, defendant tripped and fell. When defendant got up, Carter noticed jewelry where defendant had fallen. Defendant continued to flee towards the backyard, breaking a white picket fence in his path. Carter gave chase, announcing his presence by loudly saying, "Antioch Police. Get on the ground." Defendant continued to flee until Carter caught and tackled him to the ground. Defendant continued to struggle. When Carter felt tugging on his duty belt, he punched defendant twice in the left rib cage. Defendant continued to struggle, biting Carter on his forearm. Ultimately Carter was able to draw his taser and order defendant to stay on the ground. Defendant finally complied. Another officer arrived on the scene and took defendant into custody.

Officer Ted Chang subsequently conducted an in-field show-up and Perez identified all three young men. He recognized defendant by his clothing, age, and build. Peter Scheier identified pieces of jewelry that belong to his wife and that were returned to him that day.

Kwana Hood, a resident of the area, testified for the defense. Around noon on May 17, she saw defendant handcuffed, wounded, and lying on the ground surrounded by two police officers. After a Caucasian officer helped defendant up, she testified that the officers "body slammed [defendant] face down to the ground," even though she did not see defendant do anything. When the African-American officer noticed Hood at the window, she heard him tell the white officer, "Okay man, be cool."

In closing argument, defense counsel argued that defendant was incorrectly identified as one of the burglars. He claimed that the in-field show-up was suggestive and Perez's identification was "tainted by the fact that it's brief, it's someone he never saw, and it's based only on generic clothing."

Prior to trial, defense counsel filed a motion in limine to exclude any reference to the fact that at the time of the incident defendant was on probation. The prosecutor opposed the request, arguing that defendant's probation was relevant because he "was actually under a legal obligation to submit his person to search by that police officer" and "his prior knowledge of his legal obligation factors into what he knew he was doing when he fled from a police officer." He argued that the circumstances of defendant's flight were "all the more critical in terms of the defendant's consciousness of guilt" because the defense's strategy would be mistaken identification. He stated that evidence of defendant's probationary status was relevant to "show consciousness of guilt which could . . . show ID." Defense counsel argued that the evidence was "a back door way of showing criminal propensity." He claimed that the evidence had little probative value and was highly prejudicial because the jury would be left to speculate as to defendant's criminal history. He argued that the prosecution could effectively make the consciousness of guilt argument without introducing evidence of defendant's probation status.

The court ultimately ruled that defendant's probationary status and "the fact that he was under a legal obligation to submit his person to a search by a police officer" "added relevant evidence to the issues of the flight, consciousness of guilt, and the resisting." The court took judicial notice and advised the jury that at the time of the incident defendant was on probation with a search clause. Carter testified that under the search clause a person must submit his person, residence, and any storage locker to search by a police officer at any time.

Defendant was charged with, among other things, first degree burglary (Pen. Code<sup>1</sup> §§ 459/460, subd. (a)) and resisting an executive officer (§ 69). The jury found defendant guilty on both counts, and the court imposed a prison sentence of four years and eight months. Defendant filed a timely notice of appeal.

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise noted.

## Discussion

Defendant argues the trial court erred in admitting evidence that he was on probation with a search clause at the time of the underlying incident. He contends that this evidence constituted impermissible character evidence under Evidence Code section 1101, subdivision (a), and was both cumulative and unduly prejudicial under Evidence Code section 352. We disagree.

The trial court has “broad discretion in determining the relevance of evidence.” (*People v. Scheid* (1997) 16 Cal.4th 1, 14.) The court also “enjoys broad discretion in assessing whether the probative value of particular evidence is outweighed by concerns of undue prejudice, confusion, or consumption of time” pursuant to Evidence Code section 352. (*People v. Dyer* (1988) 45 Cal.3d 26, 73.) “The weighing process under section 352 depends upon the trial court’s consideration of the unique facts and issues of each case, rather than upon mechanically automatic rules. . . .” (*People v. Greenberger* (1997) 58 Cal.App.4th 298, 352.) In deciding whether a trial court has abused its discretion, “[a]n appellate tribunal is not authorized to substitute its judgment for that of the trial judge.” (*People v. Stewart* (1985) 171 Cal.App.3d 59, 65.) Abuse occurs when a trial court “exceeds the bounds of reason, all of the circumstances being considered.” (*People v. Giminez* (1975) 14 Cal.3d 68, 72.)

Evidence of a defendant’s flight from a crime scene may be relevant to show consciousness of guilt, and consciousness of guilt is relevant to whether the fleeing individual committed the charged offense. (*People v. Abilez* (2007) 41 Cal.4th 472, 521–522.) Here, the trial court correctly noted that defendant’s probation status was relevant to issues of his “flight, consciousness of guilt, and [resisting arrest].” Defendant was legally bound to submit to a search by any officer at any time with or without probable cause. His presumed knowledge of his probation obligations was relevant to the “meaning and importance” of his flight, as it strengthened the inference that the flight was motivated by guilty knowledge. (CALCRIM No. 372.)

The evidence was not admitted to show propensity, but to indicate defendant's state of mind and consciousness of guilt. Evidence Code section 1101 does not preclude admission of prior offenses "when relevant to prove some fact . . . other than his or her disposition to commit such an act." (Evid. Code § 1101, subd. (b).) The trial court here specifically told the jury, "[d]o not conclude from this evidence that the defendant has a bad character or is disposed to commit crime." Similarly, defense counsel reminded the jury that evidence of defendant's probationary status was admitted only for a limited purpose.

Defendant argues that regardless of the search condition, he had an obligation to stop when Officer Carter sought to detain him, so that the evidence "constituted merely cumulative evidence on the issues relating to flight, consciousness of guilt, and resisting arrest." However, defendant's prior knowledge of his probation condition gave rise to an even stronger inference of consciousness of guilt. Even "[e]vidence that is identical in subject matter to other evidence should not be excluded as 'cumulative' when it has greater evidentiary weight or probative value." (*People v. Mattson* (1990) 50 Cal.3d 826, 871)

Because defendant denied involvement in the burglary, the relevance and probative value of the consciousness of guilt evidence was considerable. Any prejudicial effect of this evidence was negligible. The jury was not informed about the nature of defendant's prior misconduct so that the evidence was not likely to inflame the jury. Moreover, the court instructed the jury to use the evidence only "in deciding whether the defendant was required to submit to [Officer] Carter's commands and in deciding the meaning and importance of defendant's flight, if anything." There is no reason to question the normal presumption that the jury understood and followed that instruction. (*People v. Wilson* (2008) 44 Cal.4<sup>th</sup> 758, 803).

Thus, we conclude there was no error in the admission of the disputed evidence. We also agree with the Attorney General that any conceivable error was harmless because of the overwhelming weight of the other evidence of defendant's guilt.

Defendant was observed entering and leaving the victim's home, was captured fleeing from the scene with stolen jewelry in his possession, and was identified by his clothing and general appearance at an in-field show-up within minutes of the offense. There is no reasonable likelihood that the outcome of trial would have differed had the fact of defendant's probation been excluded. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

**Disposition**

The judgment is affirmed.

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Pollak, Acting P.J.

We concur:

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Siggins, J.

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Jenkins, J.